IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 13838 of 2007

Date of decision : October 11, 2007

Satish Kumar,

.....Petitioner

through Mr. Hari Om Attri, Advocate

v.

Land Acquisition Collector, Hisar

.....Respondent

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

The petitioner prays for the issuance of an appropriate writ, order or direction, in the nature of certiorari for setting aside the orders, dated 9.2.2004, passed by the Land Acquisition Collector, Urban Estate Department, Haryana, dismissing the petitioner's application, under Section 28A of the Land Acquisition Act, 1894 (for short herein after referred to as "the Act"), and for setting aside the award, dated 1.8.2007, passed by the Additional District Judge, Bhiwani, dismissing the reference petition, filed

by the petitioner, under Section 28A(3) of the Act.

The petitioner alleges that his land, measuring 7 marlas, comprised in Khewat No.145/3, was acquired by the government. The Collector pronounced award No.7, dated 10.11.1985. The petitioner did not file any reference petition, under Section 18 of the Act. On references, made by other land owners, the Additional District Judge, Bhiwani, vide award, dated 9.10.1988, awarded compensation @ Rs.63,000/- per acre, alongwith solatium and interest @ 30% and 9% respectively. Dis-satisfied with the aforementioned award, the land owners filed Regular First Appeals before this Court. The matter was finally adjudicated in RFA No.947 of 1994, titled as Shanti Devi etc. versus State of Haryana & others, 1999(2) PLR 640. In the meanwhile, the petitioner, relying upon another award, made by the reference court in LAC No.33, dated 31.3.1997, decided on 9.10.1998, filed an application, under Section 28-A of the Act, requesting the Land Acquisition Collector to re-determine compensation, in accordance with the amount, awarded by the Reference Court. The Land Acquisition Collector, vide order, dated 9.2.2004, dismissed the application.

The petitioner thereafter, filed an application, under Section 28-A(3) of the Act, praying that as he was dis-satisfied with the Collector's award, the matter be referred to the Reference Court for adjudication. Accordingly, the reference petition was forwarded to the Court of Additional District Judge, Bhiwani, as Petition No.131/LA/RBT of 2004/2007, dated 4.12.2004. The Reference Court framed the following issues :-

> "1. Whether the petition in hand under Section 28A(3) of the Act is within the limitation ? OPP

2. Relief."

Under issue No.1, the Additional District Judge, Bhiwani held that the application, under Section 28A of the Act, was beyond limitation and, therefore, the Collector rightly dismissed the application. The Reference Court also held that as the petitioner had not filed any application, under Section 18 of the Act, he was not entitled to the enhanced compensation.

We have heard learned counsel for the petitioner and perused the paper book.

We express our inability to interfere with the award, passed by the Additional District Judge, Bhiwani, under the Land Acquisition Act, as an alternative remedy of appeal is available to the petitioner. Section 28A of the Act reads as follows :-

> **"28A. Re-determination of the amount of compensation on the basis of the award of the Court:-** (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on

the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2)) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

Section 28-A(1) of the Act entitles a land owner, who has not filed a reference, under Section 18 of the Act, to file an application, before the Land Acquisition Collector, calling upon him to redetermine the amount of compensation. This application has to be filed within three months of the award of the Reference Court, pronounced under Section 18 of the Act. Section 28-A(2) of the Act empowers the Collector to examine the

application and pass orders thereon, either accepting or rejecting the claim.

Section 28-A(3) of the Act postulates, that any person, who has not accepted the award, under sub-section (2), may, by a written application to the Collector, require that the matter be referred for determination of the Court (the Court of District Judge/Additional District Judge). In addition, Section 28-A(3) of the Act postulates that the provisions of Sections 18 to 28 of the Act shall, so far as may be, apply to such reference, as they apply to a reference, under Section 18 of the Act.

Thus, a "court", while adjudicating a reference, under Section 28-A(3) of the Act, forwarded by the Collector, under Section 28-A(2), is subject to the same statutory provisions, as a Court, adjudicating a reference, under Section 18 of the Act. As per section 26(2) of the Act, an award, pronounced by a Reference Court, shall be deemed to be a decree, in terms of section 2, clause (2) and section 2, clause (9) of the Code of Civil Procedure. Section 26(2) of the Act reads as follows :-

> **"26. Form of awards:-** (1) xx xx xx xx
>
> (2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908)."

As Sections 18 to 28, including Section 26(2) of the Act are applicable to awards, pronounced by the Reference Court, under Section 28-A(3) of the Act, such awards would be deemed to be decrees, in terms of section 2, clause (2) and section 2, clause (9) of the Code of Civil

Procedure, and, therefore, appealable, under Section 54 of the Act.

Section 54 of the Act provides for appeals, and reads as follows :-

> **54. Appeals in proceedings before Court**:- Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the (Supreme Court) subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof."

A conjoint reading of the statutory provisions, reproduced herein above, leaves no manner of doubt that a Reference Court, while adjudicating a reference, forwarded to it, under Section 28-A(3) of the Act, exercises the same powers, and is subject to the same statutory provisions, as a Reference Court, deciding a reference, under Section 18 of the Act. An award, pronounced under Section 28-A(3) of the Act, is, therefore, deemed to be a decree, as postulated by Section 26(2) of the Act, and would, therefore, be appealable, by filing a first appeal, before the High Court, in accordance with the provisions of Section 54 of the Act.

In the present case, as the impugned award was pronounced by the Additional District Judge, Bhiwani (the Reference Court), under Section

28-A(3) of the Act, the petitioner is relegated to his remedy of filing an appeal, in terms of Section 54 of the Act.

In view of what has been held herein above, the present petition is disposed of with liberty to the petitioner to avail his alternative remedy, in accordance with law.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

October , 2007
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